

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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LA BARBERA, et al.,

Plaintiffs,

- against -

**REPORT AND
RECOMMENDATION**

A. MORRISON TRUCKING, INC.,

Defendant.

08-CV-3095 (RJD) (JO)

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JAMES ORENSTEIN, Magistrate Judge:

Gary La Barbera and seven other trustees (the "Trustees") of the Local 282 Welfare, Pension, Annuity, Job Training, and Vacation and Sick Leave Trust Funds (the "Funds"), commenced this action on July 29, 2008, against defendant A. Morrison Trucking, Inc. ("AMT") seeking certain relief associated with AMT's alleged failure to make required contributions to the Funds, as well as its failure to submit its books and records for an audit. Docket Entry ("DE") 1 (Complaint). On February 17, 2011, the Honorable Raymond J. Dearie, United States District Judge, granted the Trustees' partial summary judgment and ordered AMT to pay delinquent contributions in the amount of \$222,386.90 for the period of August 1, 2001 through December 31, 2003. DE 51. The parties later stipulated to the amount of contributions AMT owed the Funds for the period of January 1, 2004 through January 25, 2008. DE 56. On June 28, 2011, Trustees moved for entry of judgment as well as an award of attorneys' fees and costs – the amount of which remained undetermined. DE 57. On July 22, 2011, Judge Dearie referred the matter to me for a report and recommendation. DE 60.

In a letter dated August 4, 2011, AMT disavowed any opposition to any aspect of the Trustees' request for relief. DE 62; DE 63. Accordingly, I respectfully recommend that the court enter an order awarding the Trustees judgment in the full amount requested, *see* DE 57, adjusted for per diem interest. Specifically, I recommend that the court enter judgment for the total

amount of \$995,888.65, consisting of \$222,386.90 in delinquent contributions for the period of August 1, 2001 through December 31, 2003; \$48,786.30 in delinquent contributions for the period of January 1, 2004 through January 25, 2008; \$319,697.03 in interest through August 30, 2011; \$319,697.03 in additional interest through August 30, 2011; \$82,769.00 in reasonable attorneys' fees; \$2,465.00 in auditors' fees; and \$87.39 in other litigation costs.

In calculating interest, I have assumed an end date of August 30, 2011: as objections to this Report and Recommendation will be due no later than the preceding day, that appears to be the earliest date on which the court will likely enter judgment. I also note that the parties have stipulated that AMT is not liable for any interest on the contributions due for the period of January 1, 2004 through January 25, 2008. *See* DE 56; DE 63. As a result, my interest calculations are based solely on the contributions due for the first of the two periods at issue. For this period, the Trustees have requested, and AMT has not opposed, interest in the amount of \$309,717.06 through May 31, 2011, plus per diem interest of \$109.67 thereafter, as well as additional interest as authorized by 29 U.S.C. § 1132(g)(2)(C) in an equal amount. Including the per diem interest running from June 1, 2011, each of these requests for interest comes separately to \$319,697.03. The per diem interest requested for June 1, 2011 through August 28, 2011, a period of 91 days, totals \$9,979.97. The sum of \$309,717.06 (interest through May 31, 2011) and \$9,979.97 (interest for June 1, 2011 through August 28, 2011) is \$319,697.03.

Any objections to this Report and Recommendation must be filed no later than August 29, 2011. Failure to file objections within this period designating the particular issues to be reviewed waives the right to appeal the district court's order. *See* 28 U.S.C. § 636(b)(1); Fed. R.

Civ. P. 72(b)(2); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010).

SO ORDERED.

Dated: Brooklyn, New York
August 10, 2011

/s/ James Orenstein
JAMES ORENSTEIN
U.S. Magistrate Judge